

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Princeville, Kapaa and Kalaheo, Hawaii) )

MM Docket No. 99-139  
RM-9402  
RM-9412

RECEIVED

JUN 21 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**JOINT COMMENTS  
ON NOTICE OF PROPOSED RULE MAKING**

Vetter Communications ("Vetter") and B&GRS Partnership ("B&GRS") (jointly referred to herein as "Petitioners") hereby jointly file their comments on the Commission's *Notice of Proposed Rule Making*, DA 99-815, released April 30, 1999 ("NPRM"), in the above-captioned rule making proceeding. In support of the proposals made in the *NPRM*, Petitioners show the following:

**Background**

Vetter is permittee of Unbuilt Station KAWT, Channel 255C1, Princeville, Hawaii, and B&GRS is permittee of Unbuilt Station KAYI, Channel 260C1, Princeville, Hawaii. Neither station has been constructed because there is no site available from which either station can operate and place a city-grade contour over Princeville. In order to utilize their channels, Vetter and B&GRS filed separate petitions for rule making to reallocate their channels to other communities. Vetter sought to reallocate Channel 255C1 to Kapaa, Hawaii. B&GRS requested the reallocation of Channel 260C1 at Kalaheo, Hawaii. The Commission consolidated the petitions

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for rule making because favorable action on both petitions will result in Princeville not having any local service.

### **It Is Not Possible to Use Either Channel at Princeville**

The *NPRM* proposes to (a) reallocate Channel 255C1 from Princeville to Kapaa, Hawaii, and to modify the KAWT construction permit to specify Kapaa as its community of license; and (b) reallocate Channel 260C1 from Princeville to Kalaheo, Hawaii, and to modify the KAYI construction permit to specify Kalaheo as its community of license. The Commission noted that the concern surrounding Princeville not having any local service is ameliorated by the fact that neither KAWT nor KAYI has commenced operations at Princeville. *NPRM* at ¶ 2. The Commission stated that the “benefits and technical feasibility of maintaining a local service at Princeville will be considered in making a determination of a preferential arrangement of allotments. *Id.* However, the Commission noted that “if we determine that only one reallocation will be permitted, each proponent should provide any additional information in response to this Notice that it believes will demonstrate the greater need for a first local service at its proposed community of license.” *Id.* at ¶ 5.

Petitioners have both demonstrated in their petitions for rule making and in a “Joint Request for Expedited Consideration” filed March 26, 1999 (copy attached for the reader’s convenience) that there are no transmitter sites available that can provide a line-of-sight service to Princeville. Attachments A and B to the Joint Request consist of Engineering Statements that explain in detail why this is so. In Attachment A, Clayton F. Caughill, president and CEO of Caughill-Palitz, Inc., broadcast engineers, states “In this negative environment, I am quite convinced that no new tower construction suitable to accommodate an FM broadcast station will

be possible in the foreseeable future. Any chance of successful completion of the zoning and other hurdles is quite remote.” In Attachment B, Clifton G. Moor, a principal in Bromo Communications, Inc., technical consultants (also a principal of B&GRS) states “In closing, let me reiterate this city of license change is needed because no other existing tower or supporting structure is available to house a Class C1 station.”

An existing tower has been identified that can accommodate both KAWT and KAYI, providing line-of-sight service into their respective proposed communities. Thus, if the reallocations are made, the public will enjoy prompt service from the stations since there is no need (indeed there is no possibility) to construct new towers to support the stations’ antennas.

In light of the above, it is clearly in the public interest to reallocate both Channels 255C1 and 260C1 as requested. Failure to do so will result in both channels remaining unusable.

### **Continuing Expressions of Interest**

If the Commission makes the allotment of Channel 255C1 to Kapaa, Vetter will, within the time allotted after the effective date, file an application to construct KAWT on Channel 255C1 at Kapaa, and upon grant thereof, will construct and operate KAWT at Kapaa.

Likewise, if the Commission makes the allotment of Channel 260C1 to Kalaheo, B&GRS will, within the time allotted after the effective date, file an application to construct KAYI on Channel 260C1 at Kalaheo, and upon grant thereof, will construct and operate KAYI at Kalaheo.

WHEREFORE, Petitioners respectfully request the Commission to amend Section 73.202(b) of the Commission’s Rules as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Kapaa, Hawaii	--	255C1
Kalaheo, Hawaii	--	260C1
Princeville, Hawaii	255C1, 260C1	--

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**JOINT REQUEST FOR EXPEDITED CONSIDERATION**

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. _____
Table of Allotments,	)	RM No. _____
FM Broadcast Stations,	)	
(Princeville, Kapaa and Kalaheo, Hawaii)	)	

To: Chief, Allocations Branch

**JOINT REQUEST FOR EXPEDITED CONSIDERATION**

Vetter Communications Co., Inc. ("Vetter"), permittee of Station KAWT(FM), Princeville, Hawaii, and The B&GRS Partnership ("B&GRS"), permittee of Station KAYI(FM), Princeville, Hawaii, by their respective counsel, hereby request that the Mass Media Bureau take expedited action on the pending Petitions for Rulemaking, filed September 18, 1998, and November 12, 1998, by Vetter and B&GRS, respectively, both of which seek to change the community of license of the above-referenced stations. In support of this joint request, the following is stated:

**I. Background.**

Station KAWT. Vetter was granted a construction permit for Channel 255C1 at Princeville, Hawaii,<sup>1</sup> on June 23, 1997. In mid-July 1998, Vetter contacted the owner of the tower at its specified transmitter site in an effort to commence construction of KAWT by installing its antenna on the tower structure. Vetter was informed by the tower owner, however, that the existing tower structure no longer could accommodate an FM antenna. After making a series of efforts to

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<sup>1</sup> All communities referenced herein are located on Island of Kauai in the state of Hawaii.

find a suitable alternative site in which to locate its transmitter, Vetter discovered that there are no available sites on Kauai Island that provide a line-of-site to Princeville and would enable the proposed FM station to provide the Princeville community with a city-grade signal. Accordingly, on September 18, 1998, Vetter filed a Petition for Rulemaking seeking to amend the FM Table of Allotments by reallocating Channel 255C1 from Princeville to Kapaa, which would provide the community of Kapaa with its first local transmission service. Although Vetter filed its Petition for Rulemaking over six months ago, the petition currently remains pending. No Notice of Proposed Rule Making has been issued by the Commission.

On December 8, 1998, Vetter filed an application for an extension of the KAWT construction permit (File No. BMPH-981208JC). Vetter's extension application contains a supporting engineering statement by Clayton F. Caughill which establishes that there are no alternative transmitter sites that provide a line-of-site to Princeville.<sup>2</sup> By letter dated February 16, 1999, the FCC granted Vetter's extension application and extended the KAWT construction permit to June 23, 2000, pursuant to the new three-year construction period established in the Commission's *Report and Order* in MM Docket No. 98-43, 13 FCC Rcd 23056 (1998) ("Streamlining of Mass Media Applications, Rules and Processes") (hereinafter referred to as "*Non-Technical Streamlining Order*").<sup>3</sup>

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<sup>2</sup> A copy of Mr. Caughill's supporting engineering statement is appended hereto as Attachment A. As noted therein, Mr. Caughill has 38 years of experience as a broadcast engineer, and has been a technical consultant in Hawaii for over 25 years. Mr. Caughill's statement effectively demonstrates that the existing allotments of Channels 255C1 and 260C1 at Princeville are no longer technically viable.

<sup>3</sup> The Commission's *Non-Technical Streamlining Order* amended Section 73.3598 of the Commission's rules to extend the construction period for all broadcast stations to three years. See 13 FCC Rcd at 23090, ¶83; 47 CFR §73.3598.

Station KAYI. The construction permit for Station KAYI was granted to Moore Broadcasting Company, B&GRS' predecessor-in-interest, on September 16, 1997.<sup>4</sup> The KAWT and KAYI construction permits specify the same transmitter site. In accordance with the Commission's *Non-Technical Streamlining Order*, the KAYI construction permit soon will be extended to September 16, 2000. Due to the loss of its transmitter site and the fact there are no alternative transmitter sites available that provide a line-of-site to Princeville, B&GRS filed a Petition for Rulemaking on November 12, 1998, seeking to amend the FM Table of Allotments by reallocating Channel 260C1 from Princeville to Kalaheo, which would provide the community of Kalaheo with its first local transmission service.<sup>5</sup> Like Vetter's petition, B&GRS' rulemaking petition currently remains pending. No Notice of Proposed Rule Making has been issued by the Commission.

## **II. Request for Expedited Action.**

Vetter has been informally advised by the staff of the Allocations Branch that the pending rulemaking petitions seeking the reallocation of Channels 255C1 and 260C1 from Princeville to Kapaa and Kalaheo, respectively, will be consolidated into the same FM allotment proceeding. If both rulemaking petitions are granted, Vetter and B&GRS must each file a minor change application with the FCC specifying the new community of license of their respective station. Routine processing time for such applications is approximately four months. Upon grant of their

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<sup>4</sup> B&GRS later acquired the KAYI construction permit from Moore Broadcasting Company.

<sup>5</sup> Appended hereto as Attachment B is a supporting engineering statement provided by Clifton G. Moor, an engineer and corporate officer of Bromo Communications, Inc. Mr. Moor also is a partner in B&GRS.



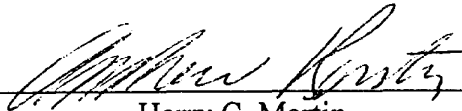
applications, Vetter and B&GRS must then complete construction of their new facilities prior to the expiration date of their respective construction permits.

If the new rules and policies announced in the FCC's *Non-Technical Streamlining Order* are strictly construed (as the Commission's staff has indicated), it is likely that both Vetter and B&GRS will be precluded from obtaining any further extensions of their respective construction permits for Stations KAWT and KAYI. Therefore, because the expiration dates for the KAWT and KAYI construction permits are approximately only 15 months (KAWT) and 18 months (KAYI) away, Vetter and B&GRS respectfully request that the Mass Media Bureau expedite the processing of their pending rulemaking petitions. Specifically, the petitioners request that the Commission issue a Notice of Proposed Rule Making concerning their respective proposals, and adopt a Report and Order in the proceeding as soon as practicable in order to allow sufficient time for (i) processing of the petitioners' respective minor change applications specifying the new communities of license, and (ii) construction of the petitioners' new facilities at Kapaa and Kalaheo prior to the expiration of their construction permits, which are due to expire on June 23, 2000, and September 16, 2000, respectively.

WHEREFORE, in light of the foregoing, Vetter Communications Co., Inc. and The B&GRS Partnership respectfully request that the Mass Media Bureau take expedited action on their pending Petitions for Rulemaking, filed September 18, 1998, and November 12, 1998, respectively, and issue a Notice of Proposed Rule Making and subsequent Report and Order as soon as practicable.

Respectfully submitted,

VETTER COMMUNICATIONS CO., INC.

By:   
Harry C. Martin  
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
(703/812-0400)

THE B&GRS PARTNERSHIP

By:  By Ash  
Gary S. Smithwick

Its Counsel

Smithwick & Belendiuk, P.C.  
1900 M Street, N.W.  
Suite 510  
Washington, DC 20036  
(202) 785-2800

March 26, 1999

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## **ATTACHMENT A**

**Supporting Engineering Statement of Clayton F. Caughill,  
Dated November 22, 1998 (See File No. BMPH-981208JC)**

**CAUGHILL-PALITZ, INC.**  
**BROADCAST ENGINEERS**  
1750 KALAKAUA AVENUE #3-120  
HONOLULU, HAWAII 96826-3795

**HONOLULU, HAWAII**  
CLAYTON F. CAUGHILL  
CRISTAN E. CAUGHILL  
RICHELLE SAYLE  
FREDERICK B. METCALF  
DARRELL Y.C. CHUN  
BOB ADAMS  
MICHAEL PALITZ

**CONSULTANT**  
ROBERT N. PALITZ  
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11/22/98

World Class Technology

with World Wide Service

Ms. Gabrielle Vetter  
Vetter Communications Co., Inc.  
PO Box 80657  
Baton Rouge, LA 70898

Dear Ms. Vetter:

I have been an engineer in a responsible management position in broadcasting for 38 years, and a technical consultant in Hawaii for over 25 years, my qualifications have been a matter of record with the Federal Communications Commission, and I am accredited as a "Certified Professional Broadcast Engineer" by the Society of Broadcast Engineers. I am President of Caughill-Palitz, Inc. My firm is engaged in the worldwide design of broadcast facilities and their construction. Members of this firm have provided testimony as an expert witnesses in litigation involving the communications industry. We have provided consulting and liaison services with governing telecommunications authorities in several countries.

I have spoken with your firm's consulting engineer, Mr. Jack Mullaney of Mullaney Engineering, Inc., regarding your loss of tower site on the Island of Kauai. Regrettably, I am not surprised to learn of Motorola Communications International, Inc.'s abrupt notification to you that they would no longer have tower space available for the construction of KAWT. Hopefully, this letter will clarify the present tower availability situation on that island.

KAWT's initial community of license, Princeville, is located in a pristine area, which has become referred to as "The Hawaii Back Lot" by the movie industry. Recently, such pictures as "Six Days and Seven Nights" with Ann Haish and Harrison Ford was filmed in this area, as were the "Jurassic Park" movies and many others, either all or in part. Princeville is located in the northern most region of the Island of Kauai. In order for KAWT to have line of site to Princeville and provide the community with a city-grade signal, the transmitter must be located north of 5,080 ft. Mt. Waialeale and 5,170 ft. Mt. Kawaikini. These mountains form an east-west barrier across the island, separating the north part of the island from the southern portion. North of these peaks, the area is protected as part of the Hanalei National Forest Reserve and Koloa Forest Reserve.

The Hanalei/Princeville area has traditionally provided spectacular scenery for Hollywood. It first gained fame as the idyllic location for the film "South Pacific". Both Kauai residents and government entities now strive to maintain the area north of the

mountains in as unspoiled a condition as possible. Jurassic dinosaurs running across the landscape with a communications tower in the background would spoil the effect.

Traditionally, the practice of certain communications providers including Motorola, I am told, would be to first seek zoning approval for a new small structure sufficient to meet their immediate needs. Once they had secured that permit, they would construct the tower with an eye toward expansion. In some instances a 30 foot high structure would be the base section of a 24' face structure. They would then acquire as many users as physically possible until the existing structure would support no more.

An application for modification of structure would be then filed with the zoning commission and the height extended another 20 feet (as an example). While adding 20' in height seems like a small thing, soon the public began to notice "bristling" large towers showing up on the landscape. This was addressed at the State level by the Department of Land and Natural Resources.

The result is that owners of such structures were required to reduce them to meet the conditions of their initial permits. In other instances, the newly aggressive enforcement of building permit compliance by the State of Hawaii and the County of Kauai served to preclude any further site expansion. Your abrupt notice from Motorola is without doubt a result of this recent situation. The publicity associated with these actions also served to focus the attention of certain segments of the public, intent on maintaining the existing environmental status.

We now find ourselves in a situation on Kauai, where tower construction has become a major public issue. To the best of my knowledge, there is no site that could be made available to you or that could be constructed that would allow unobstructed coverage of the community of Princeville. Any increased visual impact, however slight, to the environment (and that includes all possible radio site locations to the north of the mountains), would serve to endanger a large and important source of revenue to the State of Hawaii; that of the movie industry.

In the larger and populated area south of the mountains, certain competitive factions, already vying for a reduced market revenue due to the loss of tourism associated with damage from Hurricane Iniki, have combined with the environmental groups to form a number of well organized and vocal coalitions aimed at stopping any new construction involving any significant visual impact: this includes power lines and supports, multi-story buildings, and especially towers.

I am personally familiar with the tower issues on Kauai, having participated in the design and implementation of the "Hapuna Ridge Tower." This structure is a newly completed tower, antenna, and equipment housing designed to accommodate multiple FM stations by combining their transmitters into a single common wide-band antenna.

The Hapuna tower installation was vigorously opposed by the groups mentioned above, even to the point of their misrepresenting to the Commission that local zoning

and environmental approvals had not been granted or obtained, when indeed they had been, prior to CP filings with the Commission, and were a matter of readily available public record.

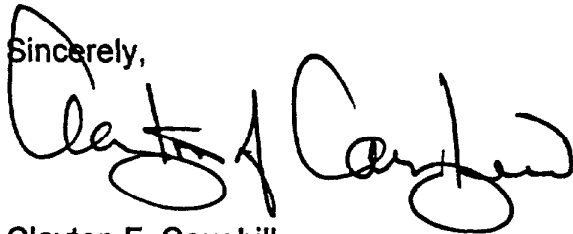
In this negative environment, I am quite convinced that no new tower construction suitable to accommodate an FM broadcast station will be possible in the foreseeable future. Any chance of successful completion of the zoning and other hurdles is quite remote. This is especially true, now that there is an available tower that can accommodate multiple stations serving nearly all of the island's population without any further environmental impact.

Regrettably, Princeville is not served by the coverage pattern of the Hapuna tower and its associated wide-band directional antenna. Much of the Princeville community is already served by buried TV cable which also carries FM services.

I understand that Vetter Communications has filed a Petition for Rulemaking seeking to change the community of license of Station KAWT from Princeville to Kapaa, Hawaii, a community which is within the coverage area provided by the Hapuna Ridge tower, and is in negotiation with its owner for its use. I have no current connection or relationship with either the site or its owners. The antenna was designed to accommodate a range of frequencies including that of Station KAWT.

In conclusion, it is my professional opinion that filing of the above referenced Petition for Rulemaking was the single most reasonable and prudent step that could have been taken to insure that the station can be successfully constructed and operated. I wish you well with your venture.

Sincerely,

A handwritten signature in black ink, appearing to read "Clayton F. Caughill". The signature is fluid and cursive, with the first and last names being more prominent.

Clayton F. Caughill  
President and CEO  
Caughill-Palitz, Inc.

**ATTACHMENT B**

**Supporting Engineering Statement of Clifton G. Moor,**  
**Dated March 25, 1999**

# **BROMO** **COMMUNICATIONS** Inc.

BROADCAST  
TECHNICAL CONSULTANTS

March 25, 1999

WILLIAM G. BROWN  
CLIFTON G. MOOR

Mail:  
P.O. Box 191747  
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Offices:  
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Atlanta, Georgia 30324

Phone: (404) 266-2257  
Fax: (404) 842-9535

Washington, DC:  
(202) 429-0600

[www.bromocom.com](http://www.bromocom.com)

**Federal Communications Commission**  
1919 M Street  
Washington, DC 20554

Dear Sirs:

These comments regard the requested changing of city of license of KAYI (CP) from Princeville, Hawaii to Kalaheo, Hawaii. I, Clifton G. Moor, am a partner in The B&GRS Partnership. Additionally, I am also an engineer and corporate officer of Bromo Communications, Inc. Bromo Communications, Inc. provides technical services to broadcasting stations.

In 1997 Moore Broadcasting Company hired Bromo Communications, Inc. to go to Princeville, Hawaii to find a site on which Moore Broadcasting could apply. That 1997 trip resulted in finding the Motorola site on which Moore Broadcasting obtained reasonable assurance, filed a Form 301 Application and eventually received a construction permit.

Moore Broadcasting later sold its construction permit to The B&GRS and I once again went to Hawaii in search of sites. I was forced to go to Hawaii because Motorola has decided not to make its site available for the use of a broadcast antenna.

Through days of searching and much, much consultation with local broadcasters it was determined that there is no site available for a Class C1 station to serve Princeville. Because all of the existing towers are not on the Princeville side of the island of Kauai but rather on the south side of the island, a change of city of license is required. An existing tower site has been identified and is available for The B&GRS to relocate its construction permit when reallocated. This new site does provide line of sight service to Kalaheo, Hawaii, the proposed new city of license.

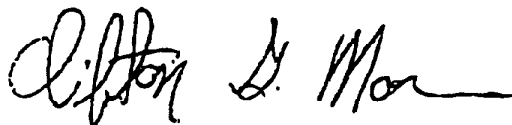
In closing let me reiterate this city of license change is needed because no other existing tower or supporting structure is available to



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Page 2

house a Class C1 station. Additionally, it is unlikely for environmental and aesthetic reason that no new tower site will be permitted in the Princeville area. There is much controversy over all new tower construction in the environmental sensitive islands. From my visits to the island of Kauai and to the city of Princeville I have experienced the local resentment of any and all new tower construction. It is my careful opinion that the only way this frequency can be used is that it be reallocated to a city of license that can be served from an existing tower.

Sincerely,

A handwritten signature in black ink, appearing to read "Clifton G. Moor". The signature is fluid and cursive, with the first name "Clifton" being more prominent and the last name "Moor" following in a similar style.

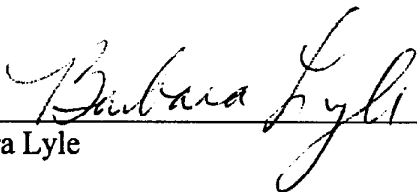
Clifton G. Moor  
The B&GRS

**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 26th day of March, 1999, copies of the foregoing "Joint Request for Expedited Consideration" were hand delivered to the following:

John A. Karousos, Chief  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

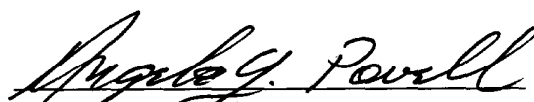
Ms. Nancy Joiner  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

  
\_\_\_\_\_  
Barbara Lyle

## CERTIFICATE OF SERVICE

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 21st day of June, 1999, a copy of the foregoing was hand delivered to the following:

Ms. Nancy Joyner  
Mass Media Bureau  
Federal Communications Commission  
The Portals II  
445 Twelfth Street, S.W.  
Room 3-A267  
Washington, D.C. 20554

  
Angela Y. Powell